



Contents

- 1 Advisory Opinions
- 5 Commission
- 6 Statistics
- 9 Public Funding
- 10 Outreach

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Advisory Opinions

[AO 2016-21: Communications Would Be Coordinated if Former Campaign Employees Use or Convey Material Information to Political Action Committee](#)

Great America PAC, a nonconnected hybrid political action committee, plans to hire phone bank personnel who may previously have been employed by a candidate or party committee. The Commission concluded that the phone bank communications proposed in the request would be coordinated communications if the employees in question used information from their prior employment in their work for the Great America PAC or conveyed such information to the PAC, and such information was material to the creation, production, or distribution of the communications.

Background

Great America PAC (the PAC) plans to hire individuals and vendors to contact potential voters through phone banks to expressly advocate the election of federal candidates. The phone banks will consist of more than 500 calls of an identical or substantially similar nature within a 30-day period.

The PAC presumes that a number of employees that they hire for the proposed phone banks will have performed similar work for federal candidates, state party committees, or national party committees within the previous 120 days. Such employees may have received training from their previous employers on technical aspects and communication elements of conducting phone banking activity. The PAC believes it is possible that employees may, despite instructions to the contrary, discuss with other employees information regarding their previous campaign employment in relation to their work for the PAC.

Analysis

The Federal Election Campaign Act (the Act) provides that expenditures made by any person that are coordinated with a federal candidate or political party committee are treated as in-kind contributions to that candidate or party committee. 52 U.S.C. § 30116(a)(7)(B).

Additionally, any payment for a communication that is coordinated with a candidate, a candidate's authorized committee, a political party committee or the agents of any of these must be treated as an in-kind contribution to the candidate or party committee with whom it was coordinated. In-kind contributions are subject to the limitations, prohibitions and reporting requirements of the Act. 11 CFR 109.21(a) and (b)(1).

In determining whether a communication is coordinated, Commission regulations provide for a three-prong test. First, the communication must be paid for, in whole or in part, by a person other than the candidate committee or political party committee. Second, the communication must satisfy one of five content standards. Third, the communications must satisfy one of five conduct standards. See, generally, 11 CFR 109.21(a).

Since the PAC plans to pay for the communications, the payment prong is satisfied. Likewise, the content prong is satisfied because the phone banks will qualify as public communications that expressly advocate the election of federal candidates. The third prong, the conduct prong, would be satisfied if an employee of the person paying for the communication (a) was employed by the candidate identified in the communication or that candidate's opponent, or a political party committee, within the previous 120 days, and (b) that employee uses or conveys to the payor information about the candidate's or party's plans, projects, activities, or needs, or information used by the employee in providing services to the candidate or party, and the information is material to the creation, production, or distribution of the communication. This conduct standard is not satisfied, however, if the information in question was obtained from a publicly available source. 11 CFR 109.21(d)(5). The Commission concluded that this "former employee" conduct standard is dependent on the materiality of the information that the employee uses or conveys and that the regulations make no distinction between categories or ranks of employees. The regulations therefore apply to any employee who uses or conveys information that is material to the communication, regardless of their rank within the organization.

The Commission noted that the former employee conduct standard does not require that the former employee act under the continuing direction or control of, at the behest of, or on behalf of, his or her former employer. Rather, it applies to situations in which either the former employee provides information or makes use of the information but does not share it with the person who is paying for the communication. Moreover, the Act provides that neither agreement nor formal collaboration is necessary to establish coordination. 11 CFR 109.21(e).

If a phone bank employee were to disobey the PAC's explicit instructions and use information acquired through a previous position with a candidate or political party committee merely in the course of his or her conversation with a potential voter, this information is "...highly unlikely to be material to the phone bank's creation, production, or distribution, and therefore equally unlikely to satisfy the former employee conduct standard."

The application of the former employee conduct standard depends upon the materiality of the information to the PAC's communications, provided that the information was not gathered from a publicly available source. The conduct standard covers instances where the information is material to decisions such as those regarding content, means or mode, specific media outlet, timing or frequency, or size, prominence or duration of the communication.

Finally, the Commission held that if the PAC were to terminate an employee immediately upon learning of that employee's potential triggering of the conduct prong, this would not

then render subsequent communications independent. If the phone bank were a coordinated communication because an employee used or conveyed information that was material to the phone bank's creation, production or distribution, the act of terminating an employee would not subsequently change the use or conveyance of this information or its materiality to the PAC's decisions relating to the phone bank.

Issued January 12, 2017; 9 pages.

(Posted 01/24/2017; By: Myles Martin)

Resources:

- [Advisory Opinion 2016-21](#) [PDF]
- [Commission consideration of AO 2016-21](#) 

[AO 2016-25: Federal Officeholder May Spend Nonfederal Funds for Certain Winding Down Expenses of Previous Nonfederal Campaign](#)

Vice President Mike Pence's previous campaign committee for Indiana governor may spend its remaining nonfederal funds for several types of expenses related to winding down its state campaign activities and complying with Indiana disclosure laws. The committee may spend funds on activities, such as storage of committee assets and legal and accounting expenses associated with winding down the campaign's operations, as long as such spending is consistent with state law.

Background

Vice President Mike Pence previously served as Governor of Indiana and was a candidate for re-election as governor until July 2016, at which time he became a nominee for Vice President. Upon his nomination for federal office, his state gubernatorial campaign (Mike Pence for Indiana) stopped raising funds, paid all expenses it had accrued up to that point, and applied a reasonable accounting method to determine how much of its remaining funds complied with federal amount limitations and source restrictions. Those federally permissible funds were then contributed to other committees or refunded to eligible donors. As a result, Pence for Indiana has remaining funds that are permissible under Indiana law, but none that comply with the limitations and prohibitions of federal law.

Mike Pence for Indiana wishes to use the remaining nonfederal funds in its account for such activities as storing nonfederal campaign assets that are owned by the committee such as files, file cabinets, desks, chairs, and a vehicle before they are eventually disposed of by the campaign. Also, the committee wishes to pay for legal and accounting expenses that are necessary to comply with Indiana campaign disclosure requirements and expenses that are associated with winding down the committee following the distribution of campaign assets.

Legal Analysis

The Federal Election Campaign Act (the Act) prohibits any federal candidate or officeholder (or any entity directly or indirectly established, financed, maintained, or controlled by, or acting on behalf of, a federal candidate or officeholder) from raising or spending funds in connection with any nonfederal election unless those funds are subject to the limitations or prohibitions the Act. 52 U.S.C. § 30125(e)(1)(B); 11 CFR

300.62. A key exception to this provision, however, permits federal candidates or officeholders who are or were candidates for state or local office to raise and spend nonfederal funds in connection with their own campaigns, provided that such activities are permissible under state law, and refer only to candidates for that state or local office. 52 U.S.C. § 30125(e)(2); 11 CFR 300.63. These nonfederal funds may be from sources prohibited by the Act or in amounts that exceed the Act's contribution limits.

In previous advisory opinions (AOs), the Commission has addressed proposed activities of nonfederal campaign committees that were established or maintained by federal officeholders, such as allowing nonfederal campaigns to raise funds to retire existing debts or to donate remaining funds to charitable organizations. See, for example, AOs [2007-01](#) (McCaskill) and [2007-26](#) (Schock).

In this case, the Commission concluded that the Act's nonfederal funds restrictions apply to Mike Pence for Indiana because Vice President Pence is currently a federal officeholder and he established, financed, maintained, or controlled Mike Pence for Indiana. However, the Commission concluded that the exception for state campaign activity applies in this instance, as long as the spending is consistent with state law, because the proposed spending activities are solely in connection with Vice President Pence's previous campaign for Governor of Indiana.

Issued January 25, 2017; 3 pages.

(Posted 02/01/2017; By: Myles Martin)

Resources:

- [Advisory Opinion 2016-25](#) [PDF]
- [Commission consideration of AO 2016-25](#) 

[AO 2016-26: Green Party of Florida Qualifies as State Party Committee](#)

The Green Party of Florida qualifies as a state committee of a political party under the Federal Election Campaign Act (the Act).

Background

Under the Act and Commission regulations, a "state committee" is an organization that by virtue of the bylaws of a political party is part of the official party structure and is responsible for the day-to-day operation of a political party at the state level, as determined by the Commission. 52 U.S.C. § 30101(15); 11 CFR 100.14(a). In order for an organization to qualify as a political party, the organization must nominate at least one candidate for federal office and that candidate's name must appear on the ballot as the candidate for that organization.

Analysis

The Commission determined that the Green Party of Ohio meets the three criteria essential to qualify as a state committee: (1) the Green Party of the U.S. (the GPUS) qualifies as a political party; (2) Green Party of Ohio is part of the official GPUS structure; and (3) Green Party of Ohio is responsible for the day-to-day operations of the GPUS at the state

level. See also Advisory Opinion (AOs) [2016-18](#) (Ohio Green Party), [2015-01](#) (Green-Rainbow Party), [2012-39](#) (Green Party of Virginia) and [2001-13](#) (GPUS).

Date Issued: January 25, 2017; 4 pages

(Posted 1/27/2017; By: Jonella Culmer)

Resources:

- [Advisory Opinion 2016-26](#) [PDF]
- [Commission consideration of AO 2016-26](#) 

[Pending Advisory Opinion Requests as of January 31, 2017](#)

Advisory Opinion Requests (AORs) pending before the Commission as of the end of the month are listed below. Procedures for commenting on pending AORs are [described here](#).

- [AOR 2016-23](#) [PDF] Renewal of partial reporting exemption for Socialist Workers Party committees (Socialist Workers Party; received November 14, 2016. Extension of time granted through March 13, 2017.)

(Posted 01/31/2017; By: Dorothy Yeager)

Resources:

- [Advisory Opinion Search](#)

Commission

[FEC Announces Appointment of Kathleen M. Guith as Associate General Counsel](#)

On January 19, 2017, the Federal Election Commission voted to appoint Kathleen M. Guith as Associate General Counsel for Enforcement.

Ms. Guith joined the Commission as a staff attorney in November 2002. Since then, she has worked in a variety of management positions in the Enforcement division, the largest contingent in the Commission's Office of General Counsel. She has been serving as acting head of the division since September 2015, a position she previously held in 2008, and from 2010 to 2012.

Ms. Guith received a B.A. from Boston College and her J.D. from Cornell Law School. She also completed graduate work in the Sociology Department at the University of Virginia. After law school, Ms. Guith worked at Arnold & Porter LLP in Washington, D.C., and then the Federal Programs Branch of the U.S. Department of Justice's Civil Division.

(Posted 01/25/2017)

Resources:

- [Press Release](#) (January 23, 2017)
- [About the FEC](#)

Statistics

[FEC Summarizes First 21 Months of Campaign Activity for 2015-2016 Election Cycle](#)

The Commission has released its statistical summary of 21-month campaign activity for the 2015-2016 election cycle. This summary covers funds raised and spent in connection with federal elections between January 1, 2015 and September 30, 2016.

Presidential Candidates

Presidential candidates raised \$1.3 billion and spent \$1.2 billion during the first 21 months of the 2015-2016 election cycle. The 107 presidential candidates who had filed campaign finance reports also disclosed combined totals of \$16.1 million in debts and \$103.3 million in cash-on-hand as of September 30, 2016.

Congressional Candidates

Candidates for the U.S. House and Senate running in the 2016 election cycle reported raising a combined \$1.4 billion and spending \$1.1 billion between January 1, 2015 and September 30, 2016. The 213 Senate candidates reported total receipts of \$498 million, disbursements of \$405.8 million, debts of \$25.8 million and cash-on-hand of \$195.2 million. Meanwhile, 1,401 House candidates reported total receipts of \$919.2 million, disbursements of \$712.4 million, debts of \$70.2 million and cash-on-hand of \$388.1 million. (Note that these figures include activity in connection with several special elections in 2015 and 2016.)

Political Party Committees

For the 2015-2016 election cycle through September 30, 2016, national, state and local political party committees reported combined total receipts of \$1.2 billion in federal funds, disbursements of \$987.3 million, debts of \$34.9 million, and cash-on-hand of \$254.3 million. Individuals were the largest source of federal funds for party committees.

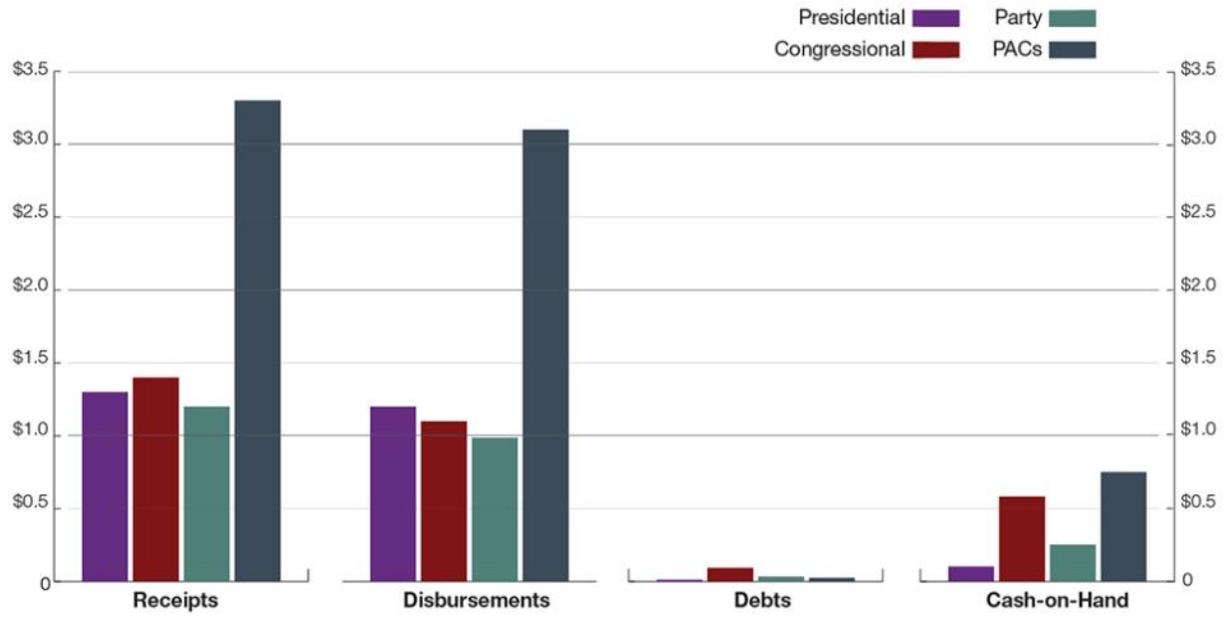
Legislation signed into law in December 2014 enabled national party committees to establish accounts to defray expenses incurred with respect to presidential nominating conventions, national party headquarters buildings and election recounts and contests. The resulting new accounts reported receiving a combined total of \$116.4 million between January 1, 2015 and September 30, 2016.

Political Action Committees (PACs)

Based on reports filed with the Commission for the 2015-16 election cycle through September 30, 2016, 8,449 federal PACs reported total receipts of \$3.3 billion, disbursements of \$3.1 billion, debts of \$24.5 million and combined cash-on-hand of \$752.3 million. Contributions by PACs to presidential and congressional candidates seeking office in the 2015-2016 election cycle totaled \$2.5 million and \$403.4 million, respectively, as of September 30, 2016.

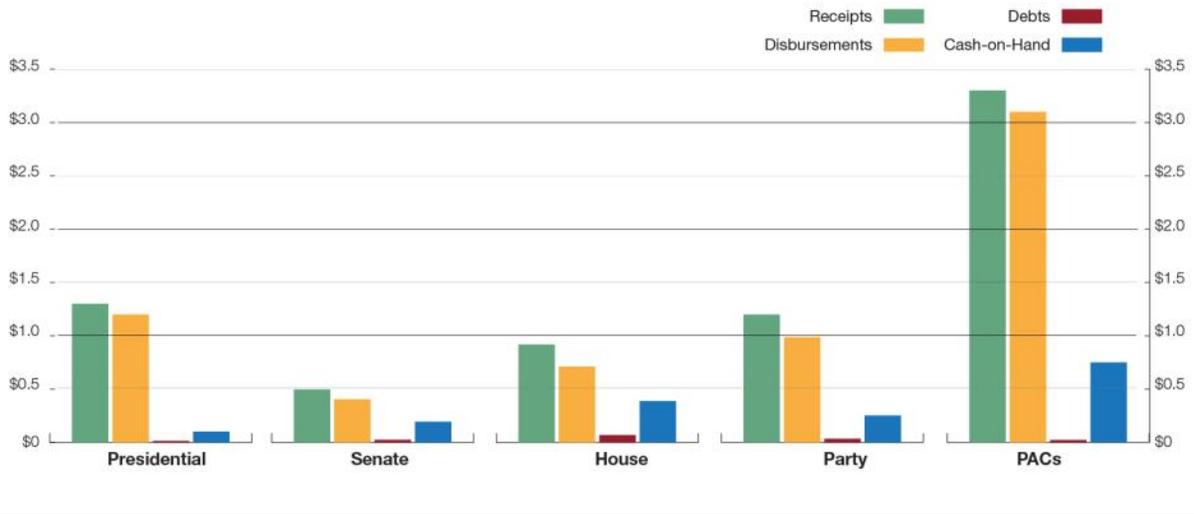
2015–2016 Campaign Finance Activity To Date, by Category

(numbers expressed in billions)



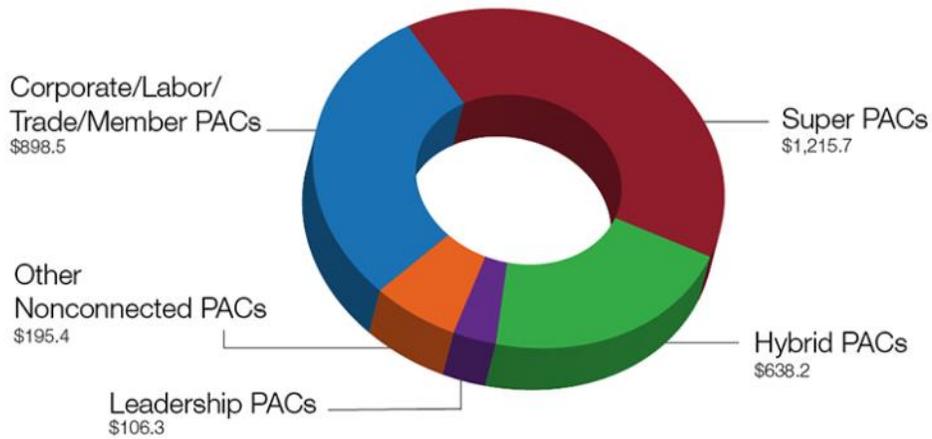
2015–2016 Campaign Finance Activity To Date, by Group

(numbers expressed in billions)



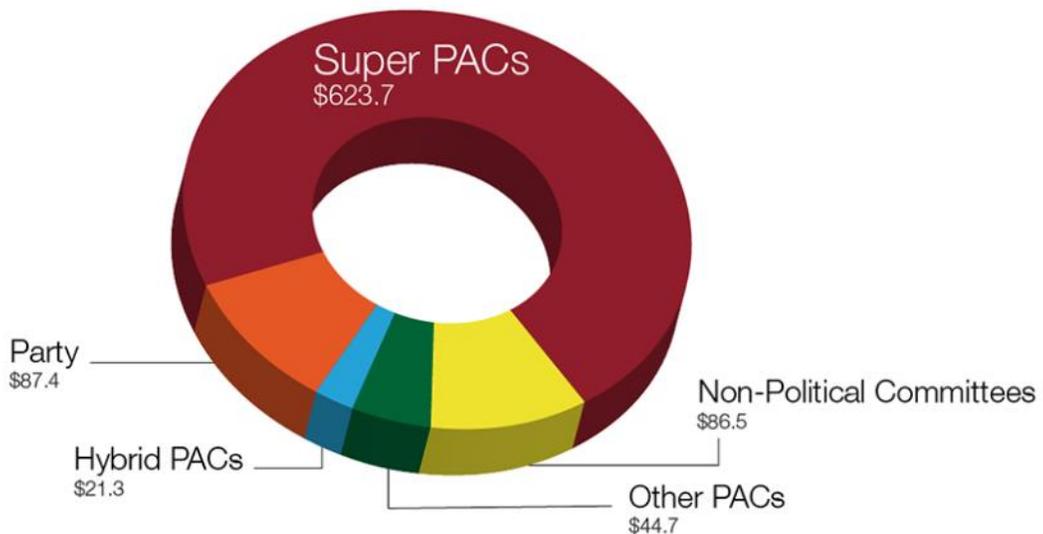
Total PAC Disbursements Made by Type Through September 30, 2016

(numbers expressed in millions)



Independent Expenditures Made Through September 30, 2016

(numbers expressed in millions)



Independent Expenditures

Independent expenditures reported to the Commission through September 30, 2016 in connection with presidential and congressional elections in the 2015-2016 election cycle totaled \$863.7 million.

Independent expenditure-only political committees (Super PACs) accounted for \$623.7 million of all independent expenditures disclosed to the Commission, while committees with non-contribution accounts (Hybrid PACs) reported spending \$21.3 million, and other PACs reported spending \$44.7 million. Independent expenditures made by persons other than political committees totaled \$86.5 million, and party committees reported independent expenditures totaling \$87.4 million.

Other Reportable Communications

Electioneering communications filings totaled \$2.4 million in the 2015-2016 election cycle through September 30, 2016. An electioneering communication is a broadcast, cable or satellite communication that refers to a clearly identified candidate (but that does not contain express advocacy) and is distributed within 30 days prior to a primary election or within 60 days prior to a general election. See 52 U.S.C. § 30104(f) and 11 CFR 100.29 and 104.20.

Express advocacy communications by corporations and labor organizations to their "restricted classes," (i.e., "Communications Costs") must be disclosed when the cost exceeds \$2,000 per election. See 52 U.S.C. § 30101(9)(B)(iii) and 11 CFR 100.134 and 104.6. The Commission received 57 such filings disclosing spending of \$15.1 million between January 1, 2015 and September 30, 2016.

Data summary tables for reports submitted to the Commission through September 30, 2016 are listed below for:

- [Presidential candidate committees](#);
- [Congressional candidate committees](#);
- [Political party committees](#);
- [PACs](#); and
- [Independent expenditures, electioneering communications and communications costs](#)

(Posted 01/24/2017; By: Dorothy Yeager. Graphics by James Jones)

Resources:

- [FEC Statistical Summary](#) (January 17, 2017)
- [Campaign Finance Disclosure Portal](#)

Public Funding

[Commission Certifies Federal Matching Funds for Stein](#)

The Federal Election Commission has certified a payment of \$134,900 in federal matching funds to Jill Stein for President in connection with the 2016 presidential primary election. The certified amount was in response to a submission for matching funds made by Stein, the Green Party's presidential candidate for 2016.

To become eligible for matching funds, candidates must raise a threshold amount of \$100,000 by collecting \$5,000 in 20 different states in amounts no greater than \$250 from any individual. Other requirements to be declared eligible include agreeing to an overall spending limit, abiding by spending limits in each state, using public funds only for legitimate campaign-related expenses, keeping financial records and permitting an extensive campaign audit.

Based on Commission certification of Jill Stein for President's initial threshold submission for matching funds in March and the Committee's three regular submissions in May, June, and October, the United States Treasury made four payments totaling \$456,035.39 to the campaign. The Commission has requested that the U.S. Treasury make a fifth payment of \$134,900, bringing the total certified amount for Stein's committee to \$590,935.39.

Materials included with Jill Stein for President's submission may be viewed [here](#).

Once declared eligible, campaigns may submit additional contributions for matching funds on the first business day of every month. The maximum amount a primary candidate could receive is currently estimated to be about \$48.01 million.

(Posted 01/17/2017)

Resources:

- [FEC Press Release](#) (January 17, 2017)
- [Press Office Backgrounder on Presidential Election Campaign Fund](#)
- [2016 Presidential Matching Fund Submissions](#)

Outreach

[FEC to Host February 21 Webinar for Corporations and their PACs](#)

The Commission will hold a one-day online seminar for corporations and their political action committees (PACs) on Tuesday, February 21, 2016. Commission staff will conduct several technical workshops on the federal campaign finance laws affecting corporations and their PACs. Workshops are designed for those seeking an introduction to the basic provisions of the law as well as for those more experienced in campaign finance law.



Webinar Information

Participants can choose one of two options for the morning session, Basics & Best Practices or Recent Developments in the Law. The afternoon will feature a two-part workshop on Corporate PAC Operations. An email containing a link to workshop materials,

technical information and additional instructions will be sent to registered participants the day before the webinar.

Registration Information

The cost to participate is \$80. Refunds (minus a \$20 registration fee) will be made for all cancellations received by 5:00 p.m. (Eastern) on Friday, February 17; no refund will be made for cancellations received after that date. For more information, and a detailed agenda, please visit the Corporate Webinar web page: <http://www.fec.gov/info/conferences/2017/corporatewebinar.shtml>. To register now, visit the following link: <http://www.cvent.com/d/7vqttg>.

Registration Questions

Please direct all questions about registration and fees to Sylvester Management Corporation (Phone: 1-800/246-7277; email: Rosalyn@sylvestermanagement.com). For other questions call the FEC's Information Division at 1-800/424-9530 (press 6), or send an email to Conferences@fec.gov.

Webinar Schedule:

February 21, 2017

Morning Sessions

- Option 1: Basics & Best Practices, 10:30 AM - 12:00 PM (Eastern)
- Option 2: Recent Developments in the Law, 10:30 AM - 12:00 PM (Eastern)

Afternoon Sessions

- Corporate PAC Operations Part 1, 1:15 - 2:45 PM (Eastern)
- Corporate PAC Operations Part 2, 3:00 - 4:30 PM (Eastern)

(Posted 01/11/2017; By: Isaac Baker)

Resources:

- [FEC Educational Outreach Page](#)
- [2017 Filing Dates](#)